



Crl.OP.Nos.6426 & 7024 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2022

PRONOUNCED ON : 20.12.2022

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.6426 & 7024 of 2022

Crl.M.P.No.3595 of 2022 &

Crl.M.P.No.3976 of 2022

Sundar ... Petitioner in
Crl.O.P.No.6426 of 2022

Andrews Caldwell ...Petitioner in
Crl.O.P.No.7024 of 2022

Vs.

1.State Represented by its
Inspector of Police,
Pallikaranai Police Station,
Chennai.

2.Sheeba ... Respondents
in both Crl.O.P.'s

PRAYER in both Crl.O.P's: These Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the records relating to FIR in Crime No.112 of 2022 on the file of Inspector of Police, Pallikaranai Police Station, Chennai and



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quash the same.

In both Crl.O.P.'s:-

For Petitioners : Mr.S.Arivazhagan

For Respondents : Mr.E.Raj Thilak (for R1)
Additional Public Prosecutor
M/s.Sheeba (Party in person for R2)

COMMON ORDER

These petitions are filed to call for the records relating to FIR in Crime No.112 of 2022 on the file of Inspector of Police, Pallikaranai Police Station, Chennai and quash the same.

2.The petitioner in Crl.O.P.No.7024 of 2022 is the first accused and the petitioner in Crl.O.P.No.6426 of 2022 is the second accused in this case.

3.The learned counsel for the petitioners submitted that the First Information Report in Crime No.112 of 2022 is falsely registered against the petitioners. The allegations in the First Information Report are totally false. On the basis of the complaint, First Information Report was registered under Sections 376, 406 I.P.C.



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in Crime No.112 of 2022 of Pallikaranai Police Station. Even as per the allegations made in the complaint, the defacto complainant admitted having consensual sexual relationship with the first accused. Therefore, *prima-facie*, there is no case made out against the accused for registering the First Information Report under Section 376 I.P.C. There is also no case made out for registering case under Section 406 I.P.C. Thus, he prayed for quashing of the case in Crime No.112 of 2022. He further submits that in case of consensual sexual relationship, question of rape will not arise. He pressed into service, the order dated 20.09.2021 passed in Crl.O.P.No.10901 of 2021. It is observed in the order as follows:-

30.....Thus, the 2nd respondent was consciously with active mind participated in the act. Further, it is not the case of passive submission in the case of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of any misconception created in her mind. It is not in dispute that the 2nd respondent had sufficient intelligence to understand the significance and moral quality of the act she was consenting and show no objection. Thus, there is a clear distinction between rape and consensual sex.



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4.Per contra, Mr.E.Raj Thilak, the learned Additional Public Prosecutor opposed these petitions on the ground that the allegations made in the complaint and in the First Information Report clearly make out a case for registering the First Information Report under Section 376 and 406 I.P.C. There are other offence are also made out. The 164 Cr.P.C. statement of the defacto complainant was recorded. The investigation is pending.

5.The defacto complainant/second respondent appeared in person. This Court offered her the legal assistance. She refused the legal assistance and wanted to make her own submissions. She submitted that all the allegations made in the complaint are true. She was not in live-in relationship with the first accused. On the other hand, he had forcible sexual intercourse with her against her will and consent. He also induced the second accused to mis-behave with her. The 62 inch TV taken by first accused is not returned. Therefore, she prayed for dismissal of these petitions.

6.Considered rival submissions and perused the records.



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7.The reading of First Information Report allegations shows that the defacto complainant came into contact with the first accused. He supported her in a dispute with neighbour and get into the good books of the petitioner. Due to the death of defacto complainant's mother and loss in business, she was under severe stress. First accused took her to pastor Isreal. Pastor Isreal asked her to observe fasting for 21 days. First accused asked defacto complainant not to entertain any relatives in her house during the 21 days of fasting. She was asked to use the salt and oil given in the church. He segregated others and made the defacto complainant lonely. He arranged a servant maid and also a driver. He referred the defacto complainant as his wife to others. He started to mis-behave with her sexually. Defacto complainant had even slapped him in the public. After 21 days of fasting, he took her again to pastor Isreal and then asked her to drink the oil. She was profusely bleeding during her menstrual cycle. Therefore, she lost lot of blood and had to be admitted in the hospital. He did not allow any one to take care of defacto complainant. One day he mis-behaved with her under the influence of alcohol. He continued to torture her. Therefore, she sent a complaint to the Joint Commissioner through whats app on 11th September. 1st accused stated that he had high connections in Police and with rowdy elements. He arranged for shifting of residence. Then they started to live in



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living together relationship. He promised to marry her. She purchased Platinum diamond ring worth Rs.1.5 lakh to gift him. But that was lost in the home. She came to know that first accused's age is 56. When she asked about his folly, he told her to leave him. She got pregnant due to the relationship with him. One day he came to house with one Sundar, the second accused. He instigated Sundar to touch her. She told Sundar that if he touch her she will beat him with chappal. First accused told her that defacto complainant is a prostitute and anybody can touch her. The 62 inch TV taken by first accused/Andrews Caldwell was not returned so far. The whereabouts of Platinum diamond ring worth Rs.1.5 lakh is in question. The aforesaid is the brief allegations made in the complaint.

8.The learned counsel for the petitioners mainly relied on the averment made that defacto complainant and the first accused was in live-in relationship. However, the perusal of the 164 Cr.P.C. statement of the defacto complainant shows that she had made specific allegations of forcible intercourse with the first accused when she was in unconscious state and when she had no control over her body. The incident had happened when she had profusely bleeding during her menstrual cycle. That apart, there are allegations of continuous sexual harassment by the first accused and



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then by the second accused. Therefore, the claim of the learned counsel for the petitioner that defacto complainant and the first accused had only consensual sexual relationship cannot be accepted at this stage. True it is that there is a contradiction with regard to the claim made in the complaint about live-in relationship and then the statement given under 164 Cr.P.C. about forcible sexual intercourse by the accused with her. This is a disputed question of fact and an investigation has to be conducted on this aspect followed by a trial to unravel the truth. There are allegations made to the effect that taking advantage of her situation where she lost her mother and suffered loss in business, first accused gained her confidence and influenced her in many ways including having sexual intercourse with her. The allegations made in the complaint have to be necessarily investigated by the respondent Police to come to the conclusion with regard to the truth or otherwise of the allegations made in the complaint. *Prima-facie*, there are materials to proceed with the investigation of this case for the offence under Section 376 and 406 I.P.C. There are also ingredients for prosecuting under other penal provisions also. Therefore, this Court is of the view that the prayer by the petitioners for quashing First Information Report in Crime No.112 of 2022 on the file of respondent Police, cannot be entertained.



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WEB COPY 9. In this view of the matter, Crl.O.P.Nos.6426 & 7024 of 2022 are dismissed. Consequently, connected miscellaneous petitions are closed.

20.12.2022

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Index : Yes / No

Speaking / Non Speaking order

G.CHANDRASEKHARAN.J.,

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To

1. Inspector of Police,
Pallikaranai Police Station,
Chennai.

2. The Public Prosecutor,
High Court of Madras.

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